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NO. 08-491

IN THE

SUPREME COURT OF THE UNITED STATES

RONALD ELIOT GAY, & WYLMA GAY COOLEY,
PETITIONER'S

VERSUS

JANET HUNT, *ET. AL.*, RESPONDENTS

ON THE PETITION FOR *WRIT OF CERTIORARI*
TO THE HONORABLE RHODE ISLAND SUPREME COURT

SUPPLEMENTAL BRIEF

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A. Table of Authorities:

A. ACTS OF CONGRESS:

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B. CONSTITUTION:

America, The United States of, The Constitution of the United States of America, September 17, 1787.

1. Amendment XIV, Section 1.

C. RULES OF THE SUPREME COURT OF THE UNITED STATES:

1. Supreme Court Rule 10.

Supplemental Brief

A. Purpose:

To refute the respondents' appeal to Supreme Court Rule 10 as the basis of their objections which they improperly included in their Express Waiver of Rights to File a Brief in Opposition.[1]

B. Challenge:

To demonstrate that Supreme Court Rule 10 allows for cases such as the petitioners', and to also present compelling reasons that the petitioners' case is worthy of federal review while also demonstrating that theirs is a true case, and that they have been truly grieved.

C. Respondents' Arguments:[2]

The respondents presented the following arguments:

1. The petitioners are challenging a decision that was "proper." a) Proper respecting its outcome,

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[1]Leon Boghossian, III, the trustee's lawyer, signed the express wavier as a respondent. He is to remain neutral. In one mediation meeting he was verbally cautioned by the Honorable Retired Chief Justice of Rhode Island, Joseph Weisberger of this fact.

[2]October 21st, 2008, All Respondents Express Waiver of the Right to File a Brief in Opposition to Certiorari Petition improperly contains objecting arguments to petitioners' position.

and b) proper in that it was "properly" decided under Rhode Island law.

2. The Rhode Island Court did not decide "*an important question of federal law.*" *cf.* SUP. Ct. R. 10.

3. The petitioner's case does not warrant federal review according to SUP. Ct. R. 10.

D. Petitioners' Response to Respondents' Arguments:

1. Was the Decision Proper?

The petitioners disagree that this decision was proper respecting its outcome, and proper in that it was properly decided according to Rhode Island law.

It has been said that, "One should never judge a book by its cover." Petitioners' case is easily jacketed with a cover that suggests the respondents' assertions. To the petitioners belongs the hard work of making known and understandable the actual contents of this book.

The respondents' arguments are, and for the most part, have been only "sound bite" summations that lack analysis. Without question, sound bite presentations are easier to comprehend. And, concerning this case history affirms that they are very effective with courts.

It is unfortunate, but once this cases' pretty cover is removed it becomes very ugly. Many difficult concepts of the law, and its relationship to testator intention

must be thoughtfully reconciled to understand this case, and "*effectuate testator intention.*" This is hard work!

Apparently, it is even harder to get the courts to do this work, which is their historic responsibility. The petitioners tackled this challenge, the respondents did not, and neither did the courts. Was this case's verdict formed by incomplete and inadequate thought, or was it formed by judicial malpractice?

The respondents claim this case was properly tried by Rhode Island law. The petitioners argued that testator intention supersedes state laws unless some illegality is expressed by that intention which is not the instant case. However, in this case, the Rhode Island law would not have been superseded in anyway.

This case comes for review with unresolved state law questions that the Rhode Island Supreme Court "absolutely" refused to address. One being the issue of *per stirpes* verses *per capita,* another, being whether or not trustees may pay themselves from the principle of a trust when the clear intentions of the testator forbid such an action! The Rhode Island Supreme Court did not even acknowledge the existence of the petitioner's two carefully researched petitions to look into this issue and conduct a fair and impartial audit! [3]

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[3] See petitioners' Joint Petition for *Writ of Certiorari*, pages 12-13. The court had a moral obligation to look into this issue because the alleged breaches occurred while the trusts where in the Rhode Island Superior and Supreme Court's care.

Petitioners face an awkward challenge concerning the claim that this case was properly judged by state law. It is true that the proper courts judged this case according to the proper laws, but propriety ended when these courts arbitrarily departed from historic precedents, and found new ways to construe their laws.

It was clearly demonstrated in briefs, re-argument petitions, and in the petition for *certiorari* that the Rhode Island Supreme Court did not judge its laws according to the actual meanings of the words of its laws, and the evident intention of its own state's legislature. The court clearly departed from centuries (Yes, Centuries!) of uncontradicted precedents of the United States Supreme Court, the Rhode Island Supreme Court, other state courts, and this court ruled differently than other jurisdictions would have ruled that have the same and similar laws!

The petitioners demonstrated how this occurred, through the misuse of case law, which is one of the federal issues, and they can only hope that this Honorable United States Supreme Court will take the time to read and think through their arguments, and that it will ask itself this question, "***Is it possible that these petitioners are right***? For the most part, the Rhode Island Supreme Court did not address the petitioners' arguments, and for the most part, those arguments that it did address were misrepresented.

2. Are there Important Questions of Federal Law?

In their sophisticated "sound bite" style, the respondents, without any analysis or explanation, appealed to Supreme Court Rule 10 as the discrediting authority to the petitioners' position. Quote: *"the Rhode Island Supreme Court did not decide 'an important question of federal law,' cf. SUP. Ct. R. 10 – meaning the case does not warrant review by this Court."*[4]

The petitioners now present their argument from Rule 10 with analysis and explanation.

a. Rule 10's introduction notes that its presented jurisdiction *"neither controls, nor fully measures the Court's discretion to indicate the character of the reasons this Honorable Court considers."* The respondents assertion is contrary to this rule!

b. Rule 10 (a) lists several of this Court's considerations. The petitioner now appeals to and argues from those considerations.

1) When court's conflict with each other with different rulings from the same or similar laws a question of federal interest is raised. The petitioners demonstrated that the Rhode Island Supreme Court's decision: a) conflicts with how other states that have the same and similar laws would have judged this case, b) conflicts with centuries of its own practice, c) conflicts with the

[4]All Respondents Waiver.

statutes of its own state, and d) most importantly, the Rhode Island Supreme Court's decision conflicts with three centuries (Yes, Three Centuries!) of decisions made by the Supreme Court of the United States regarding the same and similar matters. **Most certainly, the conflicts that the Rhode Island Supreme Court has with "all" other jurisdictions including its own history must be an issue worthy of federal review!**

2) The petitioners cautiously and respectfully make the following assertion. If *certiorari* is not granted the decisions of the two lower Rhode Island Courts will then stand. This choice, although not a direct sanction by this Court, would still have the same practical consequences as a direct sanction. This Honorable Court would then find itself in the position of sanctioning a departure from a lower court where it "*has so far departed from the accepted and usual course of judicial proceedings, ..., as to call for an exercise of this Court's supervisory power*." Most certainly, sanctioning departures from the accepted and usual course of judicial proceedings is an issue worthy of federal review.

3) Why is this Rhode Island Supreme Court's departure a departure from the accepted and usual course of judicial proceedings?

First, as already mentioned, is the fact that this departure conflicts with centuries of past practice, and the present practice of all other jurisdictions.

Secondly, this Court must consider why it is that there is such universal and fundamental agreement to the petitioners' position. The reason is *"testator intention."*

Do testators and their heirs have a federally guaranteed right to have their wills constructed if the turns of history make difficult a clear disposition of the same? Petitioners have demonstrated that the answer is – "Yes."

It is an unquestionable fact that the Rhode Island Courts absolutely refused to fairly construct Art Hadley's trusts. Chief Justice Williams was meticulously careful to not construct the trusts, and to not call this case a construction case even though these trusts should have been constructed. The fact is is that the Chief Justice created a hybrid solution that is neither a construction, nor a true intestacy. In the final analysis the court treated Art Hadley as though he were intestate without going on record as actually declaring that Art Hadley is intestate. There is something wrong with this picture, *"the effects and consequences are wrong."*

To the petitioners' knowledge there are "no" state statutes that declare that testators have the

right to have their wills constructed should the need ever arise, and why is this so? The answer lies within the fact that this legal understanding is not expressed by codes or statutes, but by the common law foundations of our country, as witnessed by centuries of uncountable decisions by courts of every type. All jurisdictions, including this United States Supreme Court, have essentially affirmed the idea that the right of a testator, and also the right of their heirs to have the wills constructed is an "*inalienable right!*" If this is true, this right then pre-dates the Constitution, and it is now a constitutionally protected right that supersedes state authority! Consequently, "NO" state, nor any court of any state, has any authority to either pass laws, or make decisions that deprive testators, and their heirs, of this right!

This idea is so aptly expressed in the United States Constitution, Amendment XIV, Section 1:

> *"... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws."*

The petitioners, have clearly presented in their briefs and petitions why it is that their, and their Great-uncle Art Hadley's, federally protected rights to "*due process of law*" have been abridged. They have also demonstrated other sufficient reasons as to why it is that testator intention is an inalienable right that supersedes state authority, and that, consequently, the states role is to protect this right by fairly, fully, and impartially constructing wills to find intention.

4) "*Federal law*" verses "*important federal question.*"

Supreme Court Rule 10 presents a distinction between "*important federal laws,*" and "*important federal questions.*" It also presents that this Court has jurisdiction over <u>both</u> concepts. In this case there are no applications of federal laws that Congress has passed that are being, or were decided upon. The petitioners' case is not about *"important federal laws"* it is about *"important federal questions."*

The respondents' emphatic assertion that "*the Rhode Island Court did not decide an important question of federal law,*" is both true and misleading. The respondents are language artisans, and they are skillfully trying to guide this Honorable Court's thinking and understanding by cleverly presenting only their selected part of the truth, not the whole truth.

Yes, it is true, that no "*important question of federal law*" was decided, However, Rule 10 also fairly notes this Court's jurisdiction over "*important federal **questions***!" The respondents' accusation fails to address the entire scope of Rule 10. Their allegation is designed to lead one to think that the Court's jurisdiction is limited by Rule 10 to being one that can **only** consider "*important questions of federal law.*"

In some respects, it can be demonstrated that testator intention, by being so aptly defined and defended in all of American and pre-American history is, in itself, a form of a federal law as defined by federal and state case precedents.[5] But, if it is not a form of federal law, it most certainly is an issue of "*important federal interest*" because it is so easily and clearly demonstrated that the seeking of testator intention has been, and is, the primary responsibility of all courts because intention is an "*inalienable right*" as demonstrated throughout all of American Judicial history.

Contrary to the assertions of the respondents, this then is an "*important federal question*" that "**is**" worthy of federal review.

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[5] This would be true if United States Supreme Court's case precedents make law.

E. Petitioners' Final Plea for *Certiorari.*

The Pledge of Allegiance:

"I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation, under God, with liberty and justice for all."

Petitioners express their appreciation that they can bring to this Honorable Court their grievances. They recognize that this Court's choice as to whether, or not, to grant *certiorari,* is a choice of its discretion.

Petitioners present many important, and yet unresolved method problems facing the judiciary.

Is America coming to the place where justice is a commodity that is bargained and traded between powerful people and big corporate banks? Is America coming to the place where people are forced to compromise their rightful inheritances by settlements for fear that they will receive nothing because of the unpredictable straying of courts from historic principles of law? Is America coming to the place where important questions are decided upon pragmatic principles of expediency, rather than upon the time honored moral values of right and wrong upon which our great country was founded? Does not the American dream of *"justice for all,"* extend to all citizens, even those most humble? Has America come to the place where courts are too busy to decide justice for the common man? Has America come to the place where it is proper for courts

to wrest any meanings from the writings of the law and testators that they desire to serve their own ends?

Throughout all of their writings the petitioners have well demonstrated, and analytically presented that their case is congruent to all laws, logic, language, history, and testator intention. The respondents and the courts have not done the same.

There are times when the Supreme Court needs to reset the entropy which affects all mankind. This resetting needs to occur wherever it is found. Petitioners have labored to present a thoughtful and correct analysis of their case in which they believe for studied reasons, reasons of conscience, reasons of law, reasons of testator intentions, and reasons arising from their natural whole blood relationship to their Great-uncle, that they are two of the true 1/11th heirs of Art Hadley's trusts for reasons of **his** intentions, and reasons of law, and that the Honorable Rhode Island Supreme Court primarily by the misuse of case law departed from the evident intentions of its own state's legislature and centuries of precedents, and that the Court improperly decided this case. This issue of courts arbitrarily forging new directions in law, and other noted issues, are most certainly issues of *"important federal interest."*

Petitioners respectfully pray for *certiorari.*

Respectfully submitted on November 7th, 2008, by *pro se* petitioners: Ronald Eliot Gay, and Wylma Gay Cooley